



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

[Docket DARS-2019-0028]

RIN 0750-AK63

Defense Federal Acquisition Regulation Supplement: Repeal of Transportation Related DFARS Provisions and Clauses (DFARS Case 2019-D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove several transportation-related provisions and clauses, as well as a clause reference, that are no longer necessary.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

The following DFARS provisions and clauses are included in solicitations and contracts for services to prepare personal

property for movement or storage, or perform intra-city of intra-area movement of personal property—

- 252.247-7008, Evaluation of Bids, which provides offerors with information on how the Government will evaluate bids received in response to a solicitation;
- 252.247-7009, Award, which provides offerors with the basis upon which the Government will make a contract award;
- 252.247-7010, Scope of Contract, which identifies the scope of the contractor's responsibility to provide supplies and services under the contract;
- 252.247-7011, Period of Contract, which identifies the period of performance for the contract and the timeframes in which new orders may be placed or completed when the contract is close to its expiration date.
- 252.247-7013, Contract Areas of Performance, which identifies the area of performance for the contract;
- 252.247-7017, Erroneous Shipments, which identifies procedures for the contractor to follow in the event an incorrect shipment occurs under the contract;
- 252.247-7018, Subcontracting, which requires the contractor to obtain written approval from the Government prior to subcontracting work under the contract; and,

- 252.247-7019, Drayage, which identifies the scope and applicable schedule for inbound and outbound drayage that occurs in connection with the contract.

In reviewing these provisions and clauses, along with current practices for acquiring these transportation services, DoD subject matter experts in transportation services advised that the information contained in these provisions and clauses is specific to the requirement and/or within the contracting officer's discretion. When applicable, the information more appropriately belongs in solicitation instructions or a performance work statement to ensure offerors and contractors receive cohesive set of instructions and performance requirements. As such, these provisions and clauses are no longer necessary and can be removed.

DFARS provision 252.247-7022, Representation of Extent of Transportation By Sea, is included in solicitations and requires an offeror to represent whether it anticipates that supplies will or will not be transported by sea in performance of the contract. The provision advises offerors that if a negative response is received to the representation, DFARS clause 252.247-7024 will be included in the subsequent contract. On February 15, 2019, DoD published a final rule (84 FR 4370) to repeal DFARS clause 252.247-7024, Notification of Transportation By Sea, and incorporate the text of the clause into DFARS clause

252.247-7023, Transportation of Supplies By Sea. As DFARS 252.247-7024 has been repealed, the DFARS provision 252.247-7022 is being revised to remove the reference to the repealed clause.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these provisions and clauses. The DoD Task Force reviewed the requirements of the transportation related DFARS provisions and clauses and determined that the DFARS coverage was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete transportation related DFARS provisions and clauses. The rule does not impose any new

requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing obsolete provisions and clauses from the DFARS and making one editorial change to a clause to remove a reference to an obsolete clause.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not subject to Executive Order (E.O.) 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 247—TRANSPORTATION

247.271-3 [Amended]

2. Amend section 247.271-3 by—
 - a. Removing paragraphs (a), (b), (d), (e), (g), (j), (k), and (l); and
 - b. Redesignating paragraphs (c), (f), (h), (i), and (m) as paragraphs (a), (b), (c), (d), and (e), respectively.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247-7008 [Removed and Reserved]

3. Remove and reserve section 252.247-7008.

252.247-7009 [Removed and Reserved]

4. Remove and reserve section 252.247-7009.

252.247-7010 [Removed and Reserved]

5. Remove and reserve section 252.247-7010.

252.247-7011 [Removed and Reserved]

6. Remove and reserve section 252.247-7011.

252.247-7013 [Removed and Reserved]

7. Remove and reserve section 252.247-7013.

252.247-7014 [Amended]

8. Amend section 252.247-7014 introductory text by removing "247.271-3(h)" and adding "247.271-3(c)" in its place.

252.247-7016 [Amended]

9. Amend section 252.247-7016 introductory text by removing "247.271-3(i)" and adding "247.271-3(d)" in its place.

252.247-7017 [Removed and Reserved]

10. Remove and reserve section 252.247-7017.

252.247-7018 [Removed and Reserved]

11. Remove and reserve section 252.247-7018.

252.247-7019 [Removed and Reserved]

12. Remove and reserve 252.247-7019.

13. Amend section 252.247-7022 by—

a. In the clause heading, removing the date "(AUG 1992)" and adding "(JUN 2019)" in its place; and

b. Revising paragraph (c).

The revision reads as follows:

252.247-7022 Representation of extent of transportation by sea.

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(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause.

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